

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Cinergy Communications Company)	IC No. 04-S87291
)	
Complaint Regarding)	
Unauthorized Change of)	
Subscriber's Telecommunications Carrier)	

ORDER ON RECONSIDERATION

Adopted: January 29, 2007

Released: January 29, 2007

By the Chief, Consumer & Governmental Affairs Bureau:

1. In this Order, we deny a Petition for Reconsideration filed by Cinergy Communications Company (Cinergy)¹ asking us to reverse a finding that Cinergy changed Complainant's telecommunications service provider in violation of the Commission's rules by failing to obtain proper authorization and verification.² On reconsideration, we affirm that Cinergy's actions violated the Commission's carrier change rules.³

I. BACKGROUND

2. In December 1998, the Commission adopted rules prohibiting the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.⁴ The rules were designed to take the profit out of slamming.⁵ The Commission applied the rules to all wireline carriers,⁶ and modified its existing requirements for the authorization and verification of preferred carrier changes.⁷

¹ See *Petition for Reconsideration of Cinergy Communications Company* (filed April 7, 2005) (*Petition*) seeking reconsideration of *Cinergy Communications Company*, 20 FCC Rcd 1302 (2005) (*Division Order*), issued by the Consumer Policy Division (Division), Consumer & Governmental Affairs Bureau (CGB).

² See *Division Order*, 20 FCC Rcd 1302 (2005).

³ See 47 C.F.R. §§ 64.1100 – 64.1190.

⁴ See *id.*; see also 47 U.S.C. § 258(a).

⁵ See *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508, 1512, para. 4 (1998) (*Section 258 Order*). See also *id.* at 1518-19, para. 13.

⁶ See *id.* at 1560, para. 85. CMRS providers were exempted from the verification requirements. See *Section 258 Order* at 1560-61, para. 85.

⁷ See *Section 258 Order*, 14 FCC Rcd at 1549, para. 66.

3. The rules require that a submitting carrier receive individual subscriber consent before a carrier change may occur.⁸ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁹

4. The Commission also adopted liability rules for carriers that engage in slamming.¹⁰ If the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.¹¹ Where the subscriber has paid charges to the unauthorized carrier, the unauthorized carrier must pay 150% of those charges to the authorized carrier, and the authorized carrier must refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.¹²

5. The Commission received a complaint on March 1, 2004, alleging that Complainant's telecommunications service provider had been changed from Southwestern Bell Telephone Company to Cinergy without Complainant's authorization.¹³ Pursuant to Sections 1.719 and 64.1150 of the Commission's rules,¹⁴ the Division notified Cinergy of the complaint.¹⁵ Cinergy responded that authorization was received and confirmed through third party verification.¹⁶ The Division found that Cinergy's verifier failed to confirm all the telephone numbers to be switched as required by the Commission's rules¹⁷ and, therefore, that Cinergy's actions resulted in an unauthorized change in Complainant's telecommunications service provider.¹⁸ Cinergy seeks reconsideration of the *Division Order*.

II. DISCUSSION

⁸ See 47 C.F.R. § 64.1120. See also 47 U.S.C. § 258(a) (barring carriers from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures).

⁹ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

¹⁰ See 47 C.F.R. §§ 64.1140, 64.1160-70.

¹¹ See 47 C.F.R. §§ 64.1140, 64.1160 (any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change).

¹² See 47 C.F.R. §§ 64.1140, 64.1170.

¹³ Informal Complaint No. IC No. 04-S87291, filed March 1, 2004.

¹⁴ 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

¹⁵ See Notice of Informal Complaint No. IC 04-S87291 to Cinergy from the Deputy Chief, Division, CGB, dated June 16, 2004.

¹⁶ Cinergy's Response to Informal Complaint No. IC-04-S87291, received July 2, 2004.

¹⁷ See *Division Order* at 20 FCC Rcd 1304, para. 4 (citing 47 C.F.R. § 64.1120(c)(3)(iii)).

¹⁸ See *Division Order* at 20 FCC Rcd 1304, para. 4 (citing 47 C.F.R. § 64.1150(d)).

6. Based on the record before us, we affirm the *Division Order* and deny Cinergy's *Petition*. In its *Petition*, Cinergy argues that the two telephone numbers that are the subject of the *Petition* were confirmed and authorized to be switched.¹⁹ Specifically, Cinergy states that Complainant, after confirming his billing telephone number, also stated "... and two extra lines."²⁰ As stated in the *Division Order*, the Commission's rules require that "all third party verifications shall elicit, at a minimum...the telephone numbers to be switched."²¹ A statement by the subscriber, "... and two extra lines" does not confirm the telephone numbers to be switched. Accordingly, we deny Cinergy's *Petition*.

III. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361, 1.106 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.106, 1.719, the *Petition for Reconsideration* filed by Cinergy on April 7, 2005, IS DENIED.

8. IT IS FURTHER ORDERED that this Order is effective UPON RELEASE.

FEDERAL COMMUNICATIONS COMMISSION

Catherine W. Seidel, Chief
Consumer & Governmental Affairs Bureau

¹⁹ See *Petition* at 1.

²⁰ *Id.*

²¹ 47 C.F.R. § 64.1120(c)(3)(iii).